

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Alex Spiro (*pro hac vice*)

2 51 Madison Ave, 22nd Floor

3 New York, NY 10010

Telephone: (212) 849-7000

4 Facsimile: (212) 849-7100

alexspiro@quinnemanuel.com

5  
6 Christopher G. Michel (*pro hac vice*)

Rachel G. Frank (California Bar No. 330040)

7 1300 I Street NW, Suite 900

8 Washington, D.C. 20005

Telephone: (202) 538-8000

9 Facsimile: (202) 538-8100

christophermichel@quinnemanuel.com

10 rachelfrank@quinnemanuel.com

11 *Attorneys for Respondent Elon Musk*

12  
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16  
17 SECURITIES AND EXCHANGE  
COMMISSION,

18 Applicant,

19 v.

20 ELON MUSK,

21 Respondent.

Case No. 3:23-mc-80253-LB

**ELON MUSK'S CIVIL LOCAL RULE  
79-5(F) ADMINISTRATIVE MOTION  
TO CONSIDER WHETHER ANOTHER  
PARTY'S MATERIAL SHOULD BE  
SEALED**

Elon Musk has filed certain exhibits to the Declaration of Alex Spiro in Support of Elon Musk's Opposition to the Securities and Exchange Commission's Notice and Application for an Order Compelling Compliance with an Administrative Subpoena ("Declaration"). Exhibits 3 and 5 to the Declaration contain information related to a non-public investigation into Mr. Musk that the Securities and Exchange Commission ("Commission") initiated in 2022. These exhibits are confidential because the Commission has ordered that the investigation be private. Further, Commission investigation documents are non-public as a matter of law. *See* 17 CFR § 203.2 ("Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public . . ."); 17 CFR § 203.5 ("Unless otherwise ordered by the Commission, all formal investigative proceedings shall be non-public."); *see also* Attorney Declaration of Robin Andrews ¶¶ 2, 5.

The parties have not conferred on the confidentiality of these materials, and due to the imminent filing deadline it is impracticable for the parties to do so before the filing. Mr. Musk is therefore filing this Administrative Motion to provide the Commission an opportunity to file, within seven days, a statement or declaration pursuant to Civil Local Rule 79-5(f)(3) regarding whether and why the above-referenced materials, or specific portions thereof, should be filed under seal.

Accordingly, pursuant to Civil Local Rule 79-5(f), Mr. Musk files this Administrative Motion to consider whether the documents identified below should be sealed:

Exhibit	Document Title	Portion of Document to be Provisionally Sealed
Exhibit #3	Order Directing Private Investigation and Designating Officers to Take Testimony	Entire Document
Exhibit #5	Corrected Order Directing Private Investigation and Designating Officers to Take Testimony	Entire Document

1       Should the Commission file a statement or declaration pursuant to Civil Local Rule 79-  
2 5(f)(3), Mr. Musk reserves his right to file a response pursuant to Civil Local Rule 79-5(f)(4).  
3 Consistent with Civil Local Rule 79-5(d), unredacted versions of the above documents accompany  
4 this Administrative Motion.

5 Dated: November 2, 2023

Respectfully submitted,

7                   QUINN EMANUEL URQUHART &  
8                   SULLIVAN, LLP

9                   /s/ Alex Spiro

Alex Spiro (*pro hac vice*)  
51 Madison Ave, 22nd Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100  
alexspiro@quinnemanuel.com

13                   Christopher G. Michel (*pro hac vice*)  
14                   Rachel G. Frank (California Bar No. 330040)  
15                   1300 I Street NW, Suite 900  
16                   Washington, D.C. 20005  
17                   Telephone: (202) 538 8000  
18                   Facsimile: (202) 538 8100  
19                   christophermichel@quinnemanuel.com  
20                   rachelfrank@quinnemanuel.com

*Attorneys for Elon Musk*

21                   \* \* \* \* \*